

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DWAYNE L. BARRETT

Claimant

VS.

BARBER CONSTRUCTION, LLC

Respondent

AND

ACCIDENT FUND INS. CO. OF AMERICA

Insurance Carrier

)
)
)
)
)
)
)
)
)
)

Docket No. 1,037,495

ORDER

Claimant appealed the June 20, 2011, Award entered by Administrative Law Judge (ALJ) Rebecca A. Sanders. The Workers Compensation Board heard oral argument on September 21, 2011. The Director appointed E. L. Lee Kinch of Wichita, Kansas, to serve as a Board Member Pro Tem in this matter in place of former Board Member Julie Sample.

APPEARANCES

Jeff K. Cooper of Topeka, Kansas, appeared for claimant. Clifford K. Stubbs of Kansas City, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. At oral argument before the Board the parties agreed to make the preliminary hearing transcripts and exhibits thereto part of the record.¹ The parties also stipulated that if the Board finds claimant suffered a personal injury by accident arising out of and in the course of his employment with respondent, rather than remand the claim to the ALJ the Board may decide all other remaining issues. Additionally, the parties stipulated at oral argument before the Board that claimant's entitlement to additional temporary total disability (TTD) benefits was no longer an issue.

¹ The parties also agreed to this at the regular hearing (R.H. Trans. at 5).

ISSUES

In the June 20, 2011, Award, ALJ Sanders determined claimant's low back injury did not arise out of and in the course of his employment and, therefore, the ALJ denied claimant's request for workers compensation benefits.

Claimant alleges that on March 1, 2007, he suffered a personal injury by accident arising out of and in the course of his employment. He asserts that as a result of his injury, he suffered a permanent functional impairment to the back. Claimant also requests an award of permanent partial general disability benefits based upon task loss and wage loss.

Respondent contends ALJ Sanders correctly determined that claimant did not sustain an injury to his low back arising out of and in the course of his employment with respondent. It argues that claimant's testimony and the medical records do not causally relate claimant's low back injury to his March 1, 2007, accident. Respondent also maintains claimant's ability to work full duty after his injury confirms that claimant's low back injury did not arise out of and in the course of his employment. Respondent asserts the Board should adopt the testimony of Dr. Chris D. Fevurly as the most credible evidence with regard to causation and the nature and extent of claimant's injury and disability. Respondent requests the Board affirm the June 20, 2011, Award.

In her Award, the ALJ listed as issues whether claimant is entitled to additional TTD benefits and whether respondent should be required to pay claimant's medical bills. At oral argument before the Board the parties indicated additional TTD benefits were no longer an issue.

The issues before the Board on this appeal are:

1. Did claimant suffer a back injury arising out of and in the course of his employment with respondent?
2. If so, what is the nature and extent of claimant's disability?
3. Is respondent liable for payment of claimant's medical bills?

FINDINGS OF FACT

After reviewing the record and considering the parties' arguments, the Board finds:

Claimant was employed by respondent as a truck driver and laborer. He spent one-half to three-fourths of his time driving a truck and the balance of his time as a laborer. On March 1, 2007, in order to drive a roller onto a trailer, claimant lifted a piece of bridge iron used as a ramp. The bridge iron weighed approximately 300 pounds. He felt a muscle pull in his left lower back, but continued to perform his normal job duties. In his application for

hearing claimant alleged a series of accidents from March 1, 2007, through his last day worked.

Claimant alleges he told Jim Barber, owner/operator of respondent, about injuring his back while lifting on the day of the accident. Claimant continued to work and perform his normal job duties. At the time claimant thought he only pulled a muscle in his lower back. Within one or two weeks after the incident, claimant began having pain in his testicles and told Mr. Barber. Respondent authorized claimant to seek treatment at the Morris County Hospital.

Mr. Barber's testimony is inconsistent. Upon direct examination by respondent's attorney, Mr. Barber testified that in March or April 2007, claimant reported having pain from lifting a ramp. Claimant complained his testicles were swelling. Mr. Barber recommended that claimant go the Morris County Hospital for treatment. Upon cross-examination by claimant's counsel, Mr. Barber said he thought that claimant reported a low back injury from lifting the ramp.² But on re-direct examination, Mr. Barber clarified that claimant only told him about a groin injury.

On April 18, 2007, claimant sought treatment at the Morris County Hospital emergency room. Claimant saw Dr. Lora A. Siegle, a family practitioner. A history was taken by an emergency room nurse and Dr. Siegle. A nurse's notes from the emergency room records indicate claimant suffered a work-related injury and that his testicles were hurting. The nurse's notes do not state claimant complained of back pain. The records from Morris County Hospital do indicate claimant complained of pain in the left flank.

Dr. Siegle testified that when she interviewed claimant, he complained of pain in the left lower quadrant of his abdomen. He did not complain to her of back pain.³ Claimant testified that he told emergency room personnel at Morris County Hospital that he thought he pulled a lower back muscle. He also told them that the pain started going down his back into his left thigh, calf muscle and foot.

Dr. Siegle diagnosed claimant with epididymitis and prescribed medication. Epididymitis is an inflammation of a gland on top of the testicle. Dr. Siegle prescribed an antibiotic for the epididymitis. No treatment was provided for claimant's low back, as he made no complains about his back. After going to the emergency room, claimant took a week off work, but then returned to his normal job duties with respondent.

Jill Downs, claimant's fiancée, also testified. On the date of the incident, claimant came home from work and told her about pulling something in his back when he lifted a ramp. Before March 1, 2007, claimant had never complained to Ms. Downs of back pain.

² P.H. Trans. (March 19, 2008) at 56.

³ Siegle Depo. at 10-11.

She testified that after March 1, 2007, claimant would limp, have sharp pain in his buttock and symptoms of back pain.

Ms. Downs indicated she accompanied claimant to the Morris County Hospital emergency room on April 18, 2007. She testified that claimant went to the Morris County Hospital because of groin and back pain. Ms. Downs testified that claimant told both a nurse and Dr. Siegle that he was having groin and back pain, but that Dr. Siegle only examined claimant's testicles.

On approximately June 2, 2007, claimant quit his job with respondent and went to work for Palm Beach Grading for an increase in wages. The job with Palm Beach was easier than claimant's job with respondent. Claimant quit his job with Palm Beach around September 1, 2007, because he lost his ride to work. Claimant testified he suffered no injuries while working for Palm Beach and he has not worked since he quit Palm Beach.

Claimant next sought medical treatment on October 7, 2007, at Geary Community Hospital emergency room where he saw Dr. Graham Keats. He went to the hospital because of experiencing unendurable low back and left leg pain while using a riding lawn mower. X-rays were taken of claimant's low back and the results indicated no acute bony pathology. Dr. Keats restricted claimant from bending, lifting, twisting and painful movements. Claimant was given a morphine injection. Claimant was prescribed a muscle relaxant and told to take ibuprofen. Dr. Keats referred claimant to Dr. Shane T. Fejfar, an orthopedic surgeon.

Dr. Fejfar saw claimant on October 8, 2007. Claimant indicated to Dr. Fejfar that the pain began in March 2007.⁴ Claimant also reported pain while on the riding lawn mower. Dr. Fejfar prescribed anti-inflammatory medications and ordered an MRI. Depending on the MRI results, consideration would be given for therapy and lumbar epidural steroid injections versus referral to a spine specialist for surgery. The MRI was conducted on October 9, 2007, and disclosed that claimant had an asymmetric disc bulging toward the left at L5-S1 with thickening of the left S1 nerve root. Claimant was to see Dr. Fejfar after the MRI, but never did so.

Claimant returned to the Geary Community Hospital emergency room on October 30, 2007, because of intolerable low back pain. He was prescribed Lortab and Skelaxin. Claimant again went to the Geary Community Hospital emergency room on November 19, 2007, when he had an increase in back pain as a result of stepping in a hole. On December 19, 2007, claimant again visited the Geary Community Hospital emergency room for back pain because he slipped on an icy deck at home. Claimant testified he went to the emergency room because he had no other way to deal with pain management.⁵

⁴ P.H. Trans. (March 19, 2008), Cl. Ex. 1.

⁵ *Id.*, at 40.

Claimant's attorney referred claimant to Dr. Joseph W. Huston, an orthopedic physician, who saw claimant on February 15, 2008. In addition to examining claimant and obtaining a history from claimant, Dr. Huston reviewed the medical records from Dr. Fejfar and Geary Community Hospital. He agreed with the diagnosis of an asymmetric disc bulging toward the left at L5-S1 with thickening of the left S1 nerve root. He opined that based upon claimant's history, ". . . this disc problem is a direct result of activities on the job."⁶

Following the preliminary hearing of March 19, 2008, the ALJ ordered temporary total disability benefits commencing October 7, 2007, and treatment with Dr. Manguoglu. The ALJ found claimant suffered an accidental injury. Respondent appealed the ALJ's Order to this Board, and in an Order dated May 6, 2008, a Board Member found that claimant suffered a work-related injury in March 2007. The Board Member went on to state: "But, this Board Member is not persuaded that claimant's present low back complaints stem from that accident and are causally related to his work for this respondent."⁷ The Board Member indicated Dr. Huston's conclusion that claimant's disc problem was attributable to his employment was without explanation or support.

Claimant then obtained a letter from Dr. Huston dated May 13, 2008. The letter stated that from the history the doctor was able to obtain, ". . . Mr. Barrett's ongoing back pain problem is a result of work activities when he was doing heavy lifting in March 2007."⁸ Another preliminary hearing was held on September 3, 2008, where only Jill Downs, claimant's fiancée, testified. ALJ Sanders issued a Preliminary Hearing Order on the same date indicating Dr. Huston did not sufficiently link claimant's current back pain with the lifting of the beam in March 2007. The ALJ concluded: "Claimant has failed to sustain his burden of proof that claimant's present low back complaints are casually [*sic*] related to his work with respondent."⁹

At the request of his counsel, claimant saw Dr. P. Brent Koprivica, a fellow of the American Academy of Disability Evaluating Physicians, on February 7, 2009. Dr. Koprivica reviewed all of claimant's medical records since March 1, 2007, except the November 19 and December 19, 2007, visits to Geary Community Hospital. He also obtained a history from claimant and physically examined claimant. The history in Dr. Koprivica's report does not indicate claimant told Dr. Koprivica of the November 19 and December 19, 2007, visits to the emergency room at Geary Community Hospital.

⁶ *Id.*, Cl. Ex. 1.

⁷ *Barrett v. Barber Construction, LLC*, No. 1,037,495, 2008 WL 2354934 (Kan. WCAB May 6, 2008).

⁸ P.H. Trans. (Sept. 3, 2008), Cl. Ex. 1.

⁹ ALJ Preliminary Hearing Order (Sept. 3, 2008) at 1.

Dr. Koprivica diagnosed claimant with a left-sided bulging disc at L5-S1 with thickening of the left S1 nerve root. He also opined that claimant's lifting injury on March 1, 2007, is the direct, proximate and prevailing factor for the bulging disc.¹⁰ Dr. Koprivica acknowledged claimant made no complaints of a back injury when he went to the Morris County Hospital on April 18, 2007.¹¹ He also agreed that October 7, 2007, was the first time claimant complained to a medical provider concerning back pain.

Dr. Koprivica indicated that claimant should receive ongoing treatment including epidural steroid injections and an appropriate rehabilitation program. He then noted that surgical intervention would be a consideration should claimant develop intractable radicular findings.

Dr. Koprivica was asked if operating the riding mower, stepping in a hole or slipping on the icy deck could cause or aggravate claimant's back problems. He testified that claimant's bulging disc and nerve impingement were a result of the March 1, 2007, incident and the subsequent incidents temporarily exacerbated the symptoms. Dr. Koprivica testified that epididymitis can develop from a lifting event. He indicated that radicular symptoms going into the groin from the lower back or pains going into the scrotum area from epididymitis are similar.

If no further treatment was forthcoming, Dr. Koprivica indicated claimant was at maximum medical improvement. He then rated claimant in accordance with the AMA *Guides*¹² as though claimant reached MMI. Dr. Koprivica placed claimant in DRE Category III to arrive at a 10% impairment rating to the body as a whole.

Dr. Koprivica recommended that claimant should limit himself to light physical demand level of activity as defined by the Dictionary of Occupational Titles. He indicated claimant should avoid sustained or awkward postures of the low back and avoid frequent or constant bending at the waist, pushing, pulling, twisting, squatting, crawling, kneeling or climbing. Dr. Koprivica also recommended flexibility in posture, standing and walking intervals of less than one hour and captive sitting intervals of an hour or less.

Claimant was interviewed at the request of his counsel by Doug Lindahl, a vocational rehabilitation counselor, on July 3, 2009. Mr. Lindahl reviewed the restrictions of Dr. Koprivica. He obtained a job history from claimant and identified 51 non-duplicative job tasks that claimant performed in the 15 years prior to March 1, 2007. Dr. Koprivica opined claimant could not perform 41 of 51 tasks identified by Mr. Lindahl for an 80% task loss.

¹⁰ Koprivica Depo., Ex. 2.

¹¹ *Id.*, at 23.

¹² American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

At the request of respondent, claimant saw Dr. Chris D. Fevurly, an occupational medicine specialist who is recognized as a Diplomat of the American Board of Independent Medical Examiners. Dr. Fevurly saw claimant on August 3, 2009. He reviewed claimant's medical records, including Dr. Koprivica's report and the Geary Community Hospital records of November 19 and December 19, 2007. Dr. Fevurly also reviewed the radiologist's report from the October 9, 2007, MRI and an MRI that claimant underwent on July 16, 2009. Dr. Fevurly also obtained a history from claimant and physically examined claimant. He indicated claimant was not a malingerer and he did not call into question claimant's credibility.

Dr. Fevurly acknowledged the October 9, 2007, MRI results show an asymmetric disk bulge at L5-S1 to the left with possible impingement of the left S1 nerve root. He opined there is no medical evidence to suggest claimant had a permanent impairment as a result of the work events in March or April 2007. He indicated claimant's left-sided low back pain is consistent with left-sided epididymitis.

At his deposition, Dr. Fevurly was asked by both claimant's counsel and respondent's counsel about the July 16, 2009, MRI. Dr. Fevurly testified the October 9, 2007, MRI showed an asymptomatic disc bulge, while the July 16, 2009, MRI showed an actual disc herniation. He opined the change in the appearance of the MRI had nothing to do with the events of March 2007.¹³

PRINCIPLES OF LAW

A claimant in a workers compensation proceeding has the burden of proof to establish by a preponderance of the credible evidence the right to an award of compensation and to prove the various conditions on which his or her right depends.¹⁴ A claimant must establish that his personal injury was caused by an "accident arising out of and in the course of employment."¹⁵ The phrase "arising out of" employment requires some causal connection between the injury and the employment.¹⁶ The existence, nature and extent of the disability of an injured workman is a question of fact.¹⁷ A workers compensation claimant's testimony alone is sufficient evidence of the claimant's physical

¹³ Fevurly Depo. at 12.

¹⁴ K.S.A. 2006 Supp. 44-501(a); *Perez v. IBP, Inc.*, 16 Kan. App. 2d 277, 826 P.2d 520 (1991).

¹⁵ K.S.A. 2006 Supp. 44-501(a).

¹⁶ *Pinkston v. Rice Motor Co.*, 180 Kan. 295, 303 P.2d 197 (1956).

¹⁷ *Armstrong v. City of Wichita*, 21 Kan. App. 2d 750, 907 P.2d 923 (1995).

condition.¹⁸ The finder of fact is free to consider all the evidence and decide for itself the percent of disability the claimant suffers.¹⁹

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. The trier of fact is not bound by medical evidence presented in the case and has a responsibility of making its own determination.²⁰ Medical evidence is not essential to the establishment of the existence, nature and extent of an injured worker's disability.²¹

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.²² Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.²³

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

The phrase 'out of' employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises 'out of' employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises 'out of' employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase 'in the course of' employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.²⁴

¹⁸ *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

¹⁹ *Carter v. Koch Engineering*, 12 Kan. App. 2d 74, 76, 735 P.2d 247, *rev. denied* 241 Kan. 838 (1987).

²⁰ *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212 *rev. denied* 249 Kan. 778 (1991).

²¹ *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

²² K.S.A. 2006 Supp. 44-501(a).

²³ *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995).

²⁴ *Id.*, at 278.

ANALYSIS

The Board concludes that claimant has met the burden of proof that he suffered a back injury on March 1, 2007, that arose out of and in the course of his employment with respondent. Claimant and Ms. Downs testified that he injured his back while lifting a ramp on March 1, 2007. Both testified that claimant complained of back pain when he visited the emergency room of the Morris County Hospital. Both stated that claimant suffered no intervening accidents from March 1, 2007, through October 7, 2007, when claimant sought treatment at the Geary Community Hospital. An MRI performed on October 9, 2007, revealed claimant had a bulging disc.

Mr. Barber testified that claimant reported pain from lifting the ramp. He equivocated as to whether claimant reported a groin injury or a back injury. Claimant reported to Drs. Huston, Fevurly, Koprivica, Fejfar and Siegle that the injury occurred while lifting a ramp. He has been consistent in reporting left flank/buttocks and back pain to the medical providers who saw him and related this pain to the accident on March 1, 2007.

Drs. Huston and Koprivica opined that claimant's back injury is a direct result of the accident on March 1, 2007. They both testified that claimant's bulging disc, which was revealed by an MRI performed on October 9, 2007, is a direct result of his accident. Both physicians indicated that claimant temporarily aggravated his back condition in early October 2007 by operating a riding lawn mower.

The only medical opinion that claimant did not suffer a work-related back injury comes from Dr. Fevurly. Dr. Fevurly cited several factors in arriving at his opinion. He noted that claimant did not report a back injury at the Morris County Hospital emergency room. Dr. Fevurly also found it significant that claimant continued performing his normal duties for respondent for several months. He also cited the fact that claimant did not seek treatment for a back injury until October 7, 2007. He acknowledged that the October 9, 2007, MRI disclosed claimant has a bulging disc with possible nerve root impingement. Dr. Fevurly agreed that claimant has been consistent in presenting a history of the accident and back injury.

The testimony of claimant and Ms. Downs and the opinions of Drs. Huston and Koprivica are persuasive. Claimant's testimony as to the cause of his back injury has been consistent and credible. There is sufficient medical evidence to support claimant's position that his back injury arose out of and in the course of his employment with respondent. Simply put, claimant has proven by a preponderance of evidence that his back injury was caused by lifting the ramp on March 1, 2007.

In his application for hearing claimant alleged a series of injuries from March 1, 2007, until his last day worked. Claimant presented scant evidence to prove he suffered a repetitive injury. The testimony of claimant was that he suffered a single traumatic injury.

Two physicians – Drs. Fevurly and Koprivica – testified as to claimant’s permanent functional impairment. Dr. Fevurly opined that pursuant to the *AMA Guides*, claimant has no permanent impairment of function. He testified: “Yes, it’s based on the Fourth Edition of the *AMA Guides*. I think the medical records do not support that there was an injury to the low back from the work activity in March or April 2007.”²⁵ Dr. Fevurly’s opinion that claimant has no impairment is based primarily on his belief that claimant’s back injury was not work related.

Dr. Koprivica opined claimant has a permanent functional impairment of 10% to the body as a whole. He testified that after consulting the *AMA Guides*, he placed claimant in DRE Category III. Dr. Koprivica ascertained claimant cannot perform 41 of 51 job tasks identified by Mr. Lindahl for an 80% task loss. Claimant testified that he has not been employed since approximately September 1, 2007. Therefore, he has a 100% wage loss commencing September 1, 2007.

The Board finds Dr. Koprivica’s opinion that claimant has a 10% permanent functional impairment to be the most credible opinion. Dr. Fevurly’s opinion that claimant suffered no permanent functional impairment is tainted by his belief that claimant’s back injury was not work related. Therefore, the Board finds claimant has a 10% permanent functional impairment to the body as a whole which resulted from his March 1, 2007, accident. Dr. Koprivica’s testimony as to task loss is uncontroverted. Therefore, the Board finds claimant has an 80% task loss and, commencing September 1, 2007, a 100% wage loss, which results in a 90% work disability.

CONCLUSION

1. Claimant met his burden of proof that he suffered a back injury on March 1, 2007, that arose out of and in the course of his employment.

2. Claimant has a 10% permanent functional impairment to the body as a whole.

3. Claimant has an 80% task loss and, commencing September 1, 2007, a 100% wage loss, which results in a 90% work disability.

4. Respondent is liable for claimant’s reasonable medical bills including the medical bills incurred by claimant at Morris County Hospital, Geary Community Hospital, and Dr. Shane T. Fejfar as authorized medical benefits.

5. Claimant is entitled to unauthorized medical benefits, if any, up to the statutory maximum.

²⁵ Fevurly Depo. at 9.

6. Respondent is ordered to provide ongoing medical treatment as recommended by Dr. Koprivica.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.²⁶ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board reverses the June 20, 2011, Award entered by ALJ Sanders and finds:

Dwayne L. Barrett is granted compensation from Barber Construction, LLC, and its insurance carrier for a March 1, 2007, accident and resulting disability. Based upon an average weekly wage of \$440, Mr. Barrett is entitled to receive the following disability benefits:

For the period ending August 31, 2007, Mr. Barrett is entitled to receive 26.14 weeks of permanent partial general disability benefits at \$293.35 per week, or \$7,668.17, for a 10% permanent partial general disability.

For the period from September 1, 2007, through October 6, 2007, Mr. Barrett is entitled to receive 5.14 weeks of permanent partial general disability benefits at \$293.35 per week, or \$1,507.82, for a 90% permanent partial general disability.

For the period from October 7, 2007, through April 3, 2008, Mr. Barrett is entitled to receive 25.71 weeks of temporary total disability benefits at \$293.35 per week, or \$7,543.28.

For the period commencing April 4, 2008, Mr. Barrett is entitled to receive 283.90 weeks of permanent partial general disability benefits at \$293.35 per week, or \$83,280.73, for a 90% permanent partial general disability. The total award is not to exceed \$100,000.

As of November 1, 2011, Mr. Barrett is entitled to receive 25.71 weeks of temporary total disability compensation at \$293.35 per week in the sum of \$7,543.28, plus 217.99 weeks of permanent partial general disability compensation at \$293.35 per week in the sum of \$63,947.37, for a total due and owing of \$71,490.65, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance of \$28,509.35 shall be paid at \$293.35 per week until paid or until further order of the Director.

²⁶ K.S.A. 2010 Supp. 44-555c(k).

Respondent and its insurance carrier are ordered to pay the reasonable medical bills of claimant including Morris County Hospital, Geary Community Hospital, and Dr. Shane T. Fejfar as authorized medical benefits. If the parties cannot agree on the payment of medical bills, that issue may be presented by the parties to the ALJ for hearing.

Claimant is entitled to unauthorized medical benefits, if any, up to the statutory maximum.

Respondent is ordered to provide ongoing medical treatment as recommended by Dr. Koprivica.

Respondent and its insurance carrier are ordered to pay those expenses of administration listed in the ALJ's Award.

Should claimant's counsel desire a fee in this matter, counsel must seek approval from the ALJ.

IT IS SO ORDERED.

Dated this ____ day of November, 2011.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
 Clifford K. Stubbs, Attorney for Respondent and its Insurance Carrier
 Rebecca A. Sanders, Administrative Law Judge